TAXATION

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Most of the tax cases decided by the Supreme Court last year treaded on familiar grounds; the problems posed not being of first impression. Judicial restatements of the postulates previously adopted, though, serve the process of growth of the law of taxation. For refinements there are to be made, and clarifications strengthen, rather than weaken, the props on which they have been anchored. The Supreme Court in 1969 was stern on the errors of both the collecting officers of the Government and of the Courts of First Instance, while generously inclined to consider the findings and conclusions of the Court of Tax Appeals as well nigh conclusive and binding. In some cases the Supreme Court ventured into a comprehensive treatment of the taxability of a limited or particular partnership; of the ascertainment of the writing off of business losses and bad debts; and of problems affecting the implementation of the Tariff and Customs Code and of the Central Bank Circulars.

A. NATIONAL INTERNAL REVENUE CASES

1. *Limited partnership is taxable on its income; to require that income be included in the individual tax return of partners is unauthorized and illegal.*

Section 24 of the National Internal Revenue Code[1] provides for the imposition of the tax on the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnership (companias collectivas).

The income of the enumerated entities or associations treated as corporations is considered separate and distinct income subject to tax independently of the income of the partners composing them. A limited partnership, as contradistinguished from a duly registered general co-partnership, is treated as a corporation and taxable as such. In a duly registered general co-partnership, the partnership does not pay a tax but merely reports its income, the distributive shares of which are attributed to the partners in the same man-

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[1] Com. Act No. 466, before its amendments in 1968. As now amended, aside from duly registered general co-partnerships, general professional partnerships are exempt from income tax, irrespective of whether or not they are registered (Com. Act No. 466 (1939), as amended by Rep. Act No. 5331 (1968), sec. 84).

ner as though the partners received the income without the intervention of the partnership.

In *Commissioner of Internal Revenue v. Suter*[2] the Supreme Court had occasion to further discuss the taxability of a limited partnership under Section 24 of the National Internal Revenue Code. Briefly, the facts of the case are as follows: A limited partnership, named "William J. Suter 'Morcoin' Co. Ltd.," was formed on 30 September 1947 by William J. Suter, as the general partner, and Julia Spirig and Gustav Carison, as the limited partners. The partners contributed, respectively, ₱20,000.00, ₱18,000.00 and ₱2,000.00 to the partnership. On 1 October 1947, the limited partnership was registered with the Securities and Exchange Commission.

In 1948, however, general partner Suter and limited partner Spirig got married and; thereafter, on 18 December 1948, limited partner Carlson sold his share in the partnership to Suter and his wife. The sale was duly recorded with the Securities and Exchange Commission on 20 December 1948. The limited partnership had been filing its income tax returns as a corporation, without objection by the herein petitioner, Commissioner of Internal Revenue, until in 1959 when the latter, in an assessment, consolidated the income of the firm and the individual incomes of the partners-spouses Suter and Spirig, resulting in a determination of a deficiency income tax against respondent Suter in the amount of ₱2,678.06 for 1954 and ₱4,567.00 for 1955.

Unable to secure a reconsideration, respondent appealed to the Court of Tax Appeals, which court, after trial, rendered a decision, on 11 November 1965, reversing that of the Commissioner of the Internal Revenue.

The instant petition for review, filed by the Commissioner of Internal Revenue, of the tax court's aforesaid decision, raised these issues:

(a) Whether or not the corporate personality of the William J. Suter "Morcoin" Co., Ltd. should be disregarded for income tax purposes, considering that respondent William J. Suter, actually formed a single taxable unit; and

(b) Whether or not the partnership was dissolved after the marriage of the partners, respondent William J. Suter and Julia Spirig Suter, and the subsequent sale to them by the remaining partner, Gustav Carlson, of his participation of ₱2,000.00 in the partnership for a nominal amount of ₱1.00.

The Supreme Court considered the Commissioner's appeal unmeritorious.

With respect to the first issue, the Court held:

> "It being a basic tenet of the Spanish and Philippine law that the partnership has a juridical personality of its own, distinct and separate from that of its partners (unlike American and English law that does not recognize such separate juridical personality), the bypassing of the existence

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[2] G.R. No. 25532, February 28, 1969.

of the limited partnership as a taxpayer can only be done by ignoring or disregarding clear statutory mandates and basic principles of our law. The limited partnership's separate individuality makes it impossible to equate its income with that of the component members. True, section 24 of the Internal Revenue Code merges registered general co-partnerships (companias collectivas) with the personality of the individual partners for income tax purposes. But this rule is exceptional in its disregard of a cardinal tenet of our partnership laws, and can not be extended by mere implication to limited partnerships.

"The rulings cited by the petitioner (Collector of Internal Revenue v. University of the Visayas, G.R. No. 13554, Resolution of 30 October 1964, and Koppel (Phil.) Inc. v. Yatco, 77 Phil. 504 (1946)) as authority for disregarding the fiction of their corporate personality was pierced; in the present case, to do so would exempt the limited partnership from income taxation but would throw the tax burden upon the partners-spouses in their individual capacities. The corporations, in the cases cited, merely served as business conduits or alter egos of the stockholders, a factor that justified a disregard of their corporate personalities for tax purposes. This is not true in the present case. Here, the limited partnership is not a mere business conduit of the partner-spouses; it was organized for legitimate business purposes; it conducted its own dealings with its customers prior to appellee's marriage, and had been filing its own income tax returns as such independent entity. The change in its membership, brought about by the marriage of the partners and their subsequent acquisition of all interest therein, is no ground for withdrawing the partnership from the coverage of Section 24 of the tax code, requiring it to pay income tax. As far as the records show, the partners did not enter into matrimony and thereafter buy the interests of the remaining partner with the premeditated scheme or design to use the partnership as a business conduit to dodge the tax laws. Regularity, not otherwise, is presumed.

"As the limited partnership under consideration is taxable on its income, to require that income to be included in the individual tax return of respondent Suter is to over-stretch the letter and intent of the law. In fact, it would even conflict with what it specifically provides in its Section 24: for the appellant Commissioner's stand results in equal treatment, tax-wise, of a general co-partnership (compania collectiva) and a limited partnership, when the code plainly differentiates the two. Thus, the code taxes the latter on its income, but not the former, because it is in the case of compañias collectivas that the members, and not the firm, are taxable in their individual capacities for any dividend or share of the profit derived from the duly registered general partnership."

As regards the second issue, the Court ruled that the subsequent marriage of the partners did not dissolve the partnership, such marriage not being one of the causes provided for that purpose either by the Spanish Civil Code or the Code of Commerce. The Court considered as equally erroneous appellant's view, that by the marriage of both partners the company became a single proprietorship. It said that the capital contributions of partners William J. Suter and Julia Spirig were separately owned by them before their marriage; and after they were joined in wedlock, such contri-

butions remained their respective separate property under the Spanish Civil Code.[3]

Rebutting the arguments of appellant that the income of the limited partnership is actually or constructively the income of the spouses and forms part of the conjugal partnership, the Court stated:

> "This is not wholly correct. As pointed out in Agapito v. Molo, 50 Phil. 779, and People's Bank v. Register of Deeds of Manila, 60 Phil. 167, the fruits of the wife's parapherna become conjugal only when no longer needed to defray the expenses for the administration and preservation of the paraphernal capital of the wife. Then again, the appellant's argument erroneously confines itself to the question of the legal personality of the limited partnership, which is not essential to the income taxability of the partnership since the law taxes the income of even joint accounts that have no personality of their own. Appellant is, likewise, mistaken in that it assumes that the conjugal partnership of gains is a taxable unit, which it is not. What is taxable is the "income of both spouses (Section 45 (d) in their individual capacities). Though the amount of income (income of the conjugal partnership vis-a-vis the joint income of husband and wife) may be the same for a given taxable year, their consequences would be different, as their contributions in the business partnership are not the same."

Finally, the Court said that the difference in tax rates between the income of the limited partnership being consolidated with, and when split from the income of the spouses, is not a justification for requiring consolidation; the revenue code as it presently stands, does not authorize it, and even bars it by requiring the limited partnership to pay tax on its income.

2. *Owner liable for income tax on exchange of its properties for government tax-exempt bonds under Republic Act No. 333* —

E. Rodriguez, Inc. v. Collector of Internal Revenue[4] raised the question as to whether or not in determining the profit realized from the payment of the purchase price of its expropriated property, for income tax purposes, portion of the purchase price paid in the form of tax-exempt bonds issued under Republic Act No. 333 should be included.

The pertinent provisions of law involved are found in Section 9 of the Act abovementioned which reads as follows:

> "SEC. 9. The President of the Philippines is authorized to issue, in the name and behalf of the Republic of the Philippines, bonds in an amount of twenty million pesos, the proceeds of which shall be used as a revolving fund for the acquisition of private estates, the subdivision of the area, and the construction of streets, bridges, waterworks, sewerage and other municipal improvements in the Capital City of the Philippines.
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> "The bonds so authorized to be issued shall bear such date and in such form as the President of the Philippines may determine and shall bear such rate of interest and run for such length of time as may be

[3] SPANISH CIVIL CODE, art. 1936.
[4] G.R. No. 23041, July 31, 1969.

determined by the President. Both principal and interest shall be payable in Philippine currency or its equivalent in the United States currency, in the discretion of the Secretary of Finance, at the Treasury of the Philippines, and the interest shall be payable at such periods as the President of the Philippines may determine.

"Said bonds shall be exempt from taxation by the Government of the Republic of the Philippines or by any political or municipal subdivisions thereof, which fact shall be stated upon their face, in accordance with this Act, under which the said bonds are issued." (Italics supplied)

The Supreme Court adverted to its constant and uniform holding that exemption from taxation is not favored and is never presumed, and then proceeded to apply said rule to the case at bar where the law invoked (Section 9 of Republic Act No. 333) "does not make any reference whatsoever to exemption of income from sale of expropriated property thereunder,[5] unlike under Republic Act No. 1400 where, relative to the price paid by the Government for any agricultural land acquired for resale to tenants, there is an express declaration that the same 'shall not be considered as income of the landowner concerned for purposes of the income tax.'"

Dwelling on the fact that the Capital City Planning Commission and other officials of the government did make some assurance or promise to petitioner that the portion of the price of its expropriated property paid in tax-exempt government bonds would not be made subject to income tax payment, the Court pointed out that such assurance or promise cannot bind the Government. The Court invoked the well-known rule that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute and that the Government is never estopped by the mistake or error on the part of its agents.

The Court then reiterated the rule that income from expropriation proceedings is income from sales or exchange and, therefore, taxable.

3. *Increases in taxpayer's net worth not taxable if merely the result of correction of errors in its entries in its books —*

In *Fernandez Hermanos, Inc. v. Commissioner of Internal Revenue,*[6] the Supreme Court affirmed the findings and conclusion of the Court of Tax Appeals, quoted below:

"For the year 1950, respondent determined that petitioner had an increase in net worth in the sum of ₱30,050.00, and for the year 1951,

[5] The Court of Tax Appeals held, and this was adopted by the Supreme Court, that the exemption under Sec. 9 of Rep. Act No. 333 is from payment of documentary stamp tax. Moreover, Sec. 29(b) (4) of the Tax Code exempts interest derived from such bonds from income tax to the extent provided in the law authorizing the issue thereof.

[6] There are four appeals involved: G.R. No. 21551, September 30, 1969, Fernandez Hermanos, Inc., petitioner, v. Commissioner of Internal Revenue and Court of Tax Appeals, respondents; G.R. No. 21557, September 30, 1969, Commissioner of Internal Revenue, petitioner, v. Fernandez Hermanos, Inc., and Court of Tax Appeals, res-

the sum of ₱1,382.85. These amounts were treated by respondent as taxable income of petitioner for said years.

"It appears that petitioner had an account with the Manila Insurance Company, the records bearing on which were lost. When its records were reconstituted the amount of ₱349,800.00 was set up as its liability to the Manila Insurance Company. It was discovered later that the correct liability was only ₱319,750.00, or a difference of ₱30,050.00, so that the records were adjusted so as to show the correct liability. The correction or adjustment was made in 1950. Respondent contends that the reduction of petitioner's liability to Manila Insurance Company resulted in the increase of petitioner's net worth to the extent of ₱30,050.00 which is taxable. This is erroneous. The principle underlying the taxability of an increase in the net worth of a taxpayer rests on the theory that such an increase in net worth, if unreported and not explained by the taxpayer, comes from income derived from a taxable source. (See Perez v. Araneta, G.R. No. 9193, May 29, 1957; Collector of Internal Revenue v. Reyes, G.R. Nos. 11534 & 11558, Nov. 25, 1958). In this case, the increase in the net worth of petitioner's net worth to the extent of ₱30,050.00 which is the receipt by it of taxable income. It was merely the outcome of the correction of an error in the entry in its books relating to its indebtedness to the Manila Insurance Company. The Income Tax Law imposes a tax on income; it does not tax any or every increase in net worth whether or not derived from income. Surely, the said sum of ₱30,050.00 was not income to petitioner, and it was error for respondent to assess a deficiency income tax on said amount.

"[T]he same holds true in the case of the alleged increase in net worth of petitioner for the year 1951 in the sum of ₱1,382.85. It appears that certain items (all amounting to ₱1,382.85) remained in petitioner's books as outstanding liabilities of trade creditors. These accounts were discovered in 1951 as having been paid in prior years, so that the necessary adjustments were made to correct the errors. If there was an increase in net worth of the petitioner, the increase in net worth was not the result of receipt by petitioner of taxable income."

4. *Taxpayer can deduct amount represented by a claim for refund for previous year's income tax —*

Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc.[7] presented for determination a question of first impression.

Respondent filed on January 13, 1961, its income tax return for the fiscal year 1959-1960. It declared a taxable income of ₱114,368.04 and a tax due thereon amounting to ₱26,310.41, for which it paid on the same day, the amount of ₱13,155.20 as the first installment of the income tax due. On May 17, 1961, petitioner filed an amended income tax return, reporting therein

pondents; G.R. No. 24972, September 30, 1969, Commissioner of Internal Revenue, petitioner, v. Fernandez Hermanos, Inc., and the Court of Tax Appeals, respondents; G.R. No. 24978, September 30, 1969, Fernandez Hermanos, Inc., petitioner v. The Commissioner of Internal Revenue and Hon. Roman A. Umali, Court of Tax Appeals, respondents.

[7] G.R. No. 25399, July 29, 1969.

a net loss of ₱331,707.33. It thus sought a refund from the Commissioner of Internal Revenue, now the petitioner.

On February 14, 1962, respondent filed its income tax return for the fiscal year 1960-1961, setting forth its income tax liability to the tune of ₱97,345.00, but deducting the amount of ₱13,155.20 representing alleged tax credit for overpayment of the preceding fiscal year 1959-1960. On December 18, 1962, petitioner Commissioner of Internal Revenue assessed against the respondent the amount of ₱1,512.83 as 1% monthly interest on the aforesaid amount of ₱13,155.20 from January 16, 1962 to December 31, 1962. The basis for such an assessment was the absence of legal right to deduct said amount before the refund or tax credit thereof was approved by petitioner Commissioner of Internal Revenue.

The Supreme Court ruled against the imposition of ₱1,512.83 as 1% monthly for delinquency in the payment of income tax for the fiscal year 1960-1961. The Supreme Court agreed with the Court of Tax Appeals that it would be unfair and unjust for the Commissioner to exact an interest on the said sum of ₱13,155.20 which, after all, was paid to and received by the government even before the incidence of the tax in question.[8] Then, the Supreme Court went farther. It also declared that the imposition of such an interest is not supported by law. Thus:

> "The National Internal Revenue Code provides that interest upon the amount determined as a deficiency shall be assessed and shall be paid upon notice and demand from the Commissioner of Internal Revenue at the rate therein specified.[9] It is made clear, however, in an earlier provision found in the same section that if in any preceding year, the taxpayer was entitled to a refund of any amount due as tax, such amount, if not yet refunded, may be deducted from the tax to be paid.[10]
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> "There is no question respondent was entitled to a refund. Instead of waiting for the sum involved to be delivered to it, it deducted the said amount from the tax that it had to pay. That it had a right to do according to the law. It is true a doubt could have arisen due to the fact that as of the time such a deduction was made, the Commission of Internal Revenue had not as yet approved such a refund. It is an admitted fact though that respondent was clearly entitled to it and petitioner did not allege otherwise, nor could he do so. Under all the circumstances dis-

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[8] The overpayment for the fiscal year 1959-1960 and the deduction of the overpaid amount from its 1960-1961 tax liability were not denied by respondent Commissioner of Internal Revenue.

[9] Section 51(d) of the TAX CODE reads: "Interest on deficiency — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

[10] TAX CODE, sec. 51(a), par. 1.

closed therefore, the applicability of the legal provision allowing such a deduction from the amount of the tax to be paid cannot be disputed.

"This conclusion is an accordance with the principle announced in Castro v. Collector of Internal Revenue.[11] While the case is not directly in point, it yields an implication that makes even more formidable the case of respondent taxpayer. As there held, the imposition of the monthly interest was considered as not constituting a penalty but a just compensation to the state for the delay in paying the tax, and for the concomitant use by the taxpayer of funds, that rightfully should be in the government's hands. x x x

"What is therefore sought to be avoided is for the taxpayer to make use of funds that should have been paid to the government. Here, in view of the overpayment for the fiscal year 1959-1960, the sum of ₱13,155.20 had already formed part of the public funds. It cannot be said, therefore, that respondent taxpayer was guilty of any delay enabling it to utilize a sum of money that should have been in the government treasury."

5. *Writing off as worthless securities the stock of a lumber company which ceased operation allowable even if taxpayer had its sawmill and equipment of some value —*

The *Fernandez Hermanos, Inc.* case,[12] involved, among others, the allowance of the taxpayer's writing off as worthless securities in its 1950 return the sum of ₱8,050.00 representing the cost of shares of stock of Mati Lumber Company acquired by the taxpayer[13] on January 1, 1948.

The Commissioner of Internal Revenue contended that although the said company was no longer in operation in 1950, it still had its sawmill and equipment which must be of considerable value. The Court of Tax Appeals, however, found that "the company ceased operations in 1949 when its Manager and owner, a certain Mr. Rocamora, left for Spain where he subsequently died. When the company ceased to operate, it had no assets, in other words, completely insolvent. This information as to the insolvency of the Company — reached (the taxpayer) in 1950," when it properly claimed the loss as a deduction in its 1950 tax return, pursuant to Section 30(d)(4)(b) or Section 30(e)(3) of the National Internal Revenue Code.

The Supreme Court found no reason to disturb the finding of the Tax Court. It held that there was adequate basis for the writing off of the stock as worthless securities; and that even assuming that the Company would later somehow realize some proceeds from its sawmill and equipment, which were still existing as claimed by the Commissioner, and that such proceeds would later be distributed to its stockholders such as the taxpayer, the amount so received by the taxpayer would then properly be reportable as income of the taxpayer in the year it is received.

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[11] G.R. No. 12174, December 28, 1962; 6 S.C.R.A. 886 (1962).

[12] *Supra*, note 6.

[13] Taxpayer is a domestic corporation organized for the principal purpose of engaging in business as an "investment company" with main office at Manila.

6. *Partial writing off of a loss or bad debt not allowed* —

In the *Fernandez Hermanos, Inc.* case[14] the rule was made clear that neither under Section 30(d)(2) of the National Internal Revenue Code providing for deduction by corporations of losses actually sustained nor under Section 30(e)(1) thereof providing for deduction of bad debts actually ascertained to be worthless and charged off within the taxable year, can there be a partial writing off of a loss or bad debt as was sought to be done by the taxpayer. For such losses or bad debts must be ascertained to be so and written off during the taxable year, are, therefore, deductible in full or not at all, in the absence of any express provision in the tax code authorizing partial deductions.

The clarification came about because taxpayer's subsidiary company was still in operation in 1951 and 1952 and taxpayer continued to give it advances in those years, and, therefore, the alleged debt could not properly be considered worthless and deductible in 1951, as claimed by taxpayer.

The ruling sets at rest the doubt as to whether a taxpayer may deduct such business debts when only partially worthless to the extent of the amount charged off during the year. This allowance for partial worthlessness has been recognized as a variation from the general rule of no loss until a sale or complete worthlessness demonstrated by an identifiable event has occurred.[15]

The Supreme Court also reiterated the well-settled principle that voluntary advances made without expectation of repayment do not result in deductible losses, these advances being in the nature of investments and not loans.

7. *Loss must be sustained in a closed and completed transaction* —

For the taking of any kind of a recognizable loss, it is essential that there be a closed transaction, an identifiable event of some kind fixing the fact of loss. Abandonment of property, in the particular taxable year, as worthless, may sufficiently demonstrate present loss.

This requisite for deductibility was applied in the *Fernandez Hermanos, Inc.* case[16] where the Supreme Court unequivocally declared that losses are deductible in 1952, when taxpayer's mines were abandoned, and not in 1950 and 1951, when they were still in operation. The Court, therefore, dismissed as unsustainable the taxpayer's claim that losses be considered deductible on the corresponding years that they were incurred. Some definite event must fix the time when the loss is sustained, and here it was the event of actual abandonment of the mines in 1952.

[14] *Supra*, note 6.
[15] See SURREY & WARREN, FEDERAL INCOME TAXATION, 281.
[16] *Supra*, note 6.

8. *Taxpayer must submit adequate proof of useful life of asset to claim depreciation allowance* —

The *Fernandez Hermanos, Inc.* case[17] also furnished an instance of when a claim for depreciation allowance for taxpayer's building was disallowed for being excessive.

During the years 1950 to 1954, the taxpayer claimed a depreciation allowance for its buildings at the annual rate of 10%. The Commissioner of Internal Revenue claimed that the reasonable depreciation rate is only 3% per annum, and, hence, disallowed as excessive the amount claimed as depreciation allowance in excess of 3% annually. The Supreme Court sustained the Tax Court's finding that the taxpayer did not submit adequate proof of the correctness of the taxpayer's claim that the depreciable assets or buildings in question had a useful life only of 10 years so as to justify its 10% depreciation per annum claim, such finding being supported by the record. The taxpayer's contention that it has many zero or one-peso assets, representing very old and fully depreciated assets serves but to support the Commissioner's position that a 10% annual depreciation rate was excessive.

9. *Capital investment method is not a method of depletion* —

Section 30(g)(1)(B) of the National Internal Revenue Code, before its amendment by Republic Act No. 2698, provided in part:

> "(g) Depletion of oil and gas wells and mines:
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> "' (1) *In general.* — x x x (B) in the case of mines, a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year for which the return and computation are made. The allowances shall be made under rules and regulations to be prescribed by the Secretary of Finance: *Provided,* That when the allowances shall equal the capital invested, x x x no further allowance shall be made.' "

In the *Fernandez Hermanos, Inc.* case,[18] the taxpayer insisted that it could be used as a method for depletion under the pertinent provision of the Tax Code its "capital investment" representing the alleged value of its contractual rights and titles to mining claims in the sum of ₱242,408.10 and thus deduct outright one-fifth (1/5) of this "capital investment" every year, regardless of whether it had actually mined the product and sold the products.

The Supreme Court disallowed the amortization of alleged contractual rights, stating as reasons therefor:

> "The very authorities cited in its brief give the correct concept of depletion charges that they "allow for the exhaustion of the capital value of the deposits by production"; thus, "as the cost of the raw materials must be deducted from the gross income before the net income can be determined,

[17] *Supra,* note 6.
[18] *Supra,* note 6.

so the estimated cost of the reserve used up is allowed.[19] The alleged "capital investment" method invoked by the taxpayer is not a method of depletion, but the Tax Code provision, prior to its amendment by Section 1, of Republic Act No. 2698, which took effect on June 18, 1960, expressly provided that "when the allowances shall equal the capital invested x x x no further allowances shall be made;" in other words, the "capital investment" was but the limitation of the amount of depletion that could be claimed. The outright deduction by the taxpayer of 1/5 of the cost of the mines, as if it were a "straight line" rate of depreciation, was correctly held by the Tax Court not to be authorized by the Tax Code."[20]

10. *Bonuses to be deductible must be paid for services actually rendered and must be reasonable —*

In *Kuenzle & Streiff, Inc. v. Commissioner of Internal Revenue*,[21] it was found as a fact that the bonuses paid by petitioner to its officers were paid for services actually rendered by the recipients thereof. The only question or determination relates to whether or not they were reasonable.

The Supreme Court agreed with the conclusion of the Court of Appeals that they were not reasonable, considering the following material and relevant factors:

"In the first place, for the years 1953, 1954 and 1955 the petitioner paid to its following top officers x x x x substantial amounts as salaries and bonuses ranging from ₱9,000.00 yearly as a minimum (except in one case) and ₱50,000.00 as maximum. All these officials headed various departments of petitioner's business. While it must be assumed, on the one hand, in the absence of evidence to the contrary, that they were competent, on the other the record discloses no evidence nor has petitioner ever made the claim that all or some of them were gifted with some special talent, or had undergone some extraordinary training, or had accomplished any particular task, that contributed materially to the success of petitioner's business during the taxable years in question.

"In the second place, working under the above-named officials and constituting what we might call the staff of petitioner's working personnel, were a good number of other employees — mostly Filipinos all of whom, according to the record, received no pay increase at all during the same years.

"In the third place, the above salaries and bonuses were paid to petitioner's top officials mentioned heretofore, in spite of the fact that according to its income tax returns for the relevant years, it had suffered net losses as follows: ₱2,085.84, ₱4,953.91, ₱9,246.07 for the years 1953, 1954 and 1955, respectively. In fact, the petitioner's financial statements further show that its gross assets suffered a gradual decrease for the same years (Exh. F-1, p. 14 id.), and that a similar downward trend took place in its surplus and capital position during the same period of time."

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[19] C.T.A. Case No. 1389, Annex C, Commissioner's Petition, pp. 4-5.

[20] No evidence whatsoever was presented to show the produced mine and for how much they were sold during the year for which the return and computation were made. This is necessary in order to determine the amount of depletion that can be legally deducted from petitioner's gross income.

[21] G.R. No. 18840, May 29, 1969.

The Supreme Court also took note of the fact that the amounts paid as bonuses were taken either from operating funds, or from the general reserve, when, normally, the amounts taken from the first source should have constituted profits of the corporations distributable as dividends among its shareholders. The resort to the general reserve was taken by the Supreme Court as a positive indication that the items of expense to be met could not be considered as ordinary and necessary — and was, therefore, beyond the purview of Section 30(a)(1) of the National Internal Revenue Code.

11. *Taxpayers may determine their losses on the basis of inventories; may follow hybrid method of accounting* —

In *Fernandez Hermanos, Inc. v. Commissioner of Internal Revenue*[22] petitioner deducted losses in the operation of its hacienda the sums of ₱17,418.95 in 1950, ₱29,125.82 in 1951, ₱26,744.81 in 1952, ₱21,932.62 in 1953, and ₱42,938.56 in 1954. These deductions were disallowed by respondent on the ground that the farm was operated solely for pleasure or as a hobby and not for profit. This conclusion is based on the fact that the farm was operated continuously at a loss.

The Supreme Court adopted the finding of the Court of Tax Appeals that the hacienda was operated by petitioner for business and not pleasure — being mainly a cattle farm, and not used for entertainment, social activities or other non-business purpose. As such, it is entitled to deduct expenses and losses in connection with the operation of said farm.

The Supreme Court also found no compelling reason to disturb the conclusion of the Tax Court that it was satisfied with the evidence presented by taxpayer to support the deduction of its losses which merely consisted of an alleged physical count of the number of the livestock in the hacienda for the years involved.

The Supreme Court also adopted the conclusion of the Tax Court, that:

> "It is true that petitioner followed the cash basis method of reporting income and expenses in the operation of the Hacienda Dalupiri and used the accrual method with respect to its mine operations. This method of accounting otherwise known as the hybrid method, followed by petitioner is not without justification.
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> 'x x x. A taxpayer may not, ordinarily, combine the cash and accrual bases. The 1954 code provisions permit, however, the use of a hybrid method of accounting, combining a cash and accrual method, under circumstances and requirements to be set out in Regulations to be issued. Also, if a taxpayer is engaged in more than one trade or business he may use a different method of accounting for each trade or business. And a taxpayer may report income from a business on accrual basis and his personal income on the cash basis.' (See Mertens, Law of Federal Income Taxation, Zimet & Stanley Revision Vol. 2, Sec. 12.08, p. 26.)

[22] *Supra*, note 6.

12. *Jurisdiction: Secretary of Finance can review decisions of Board of Tax Appeals of Pasay City.*

Section 7 of Republic Act No. 1125[23] confers exclusive appellate jurisdiction to review by appeal, among others, decisions of provincial or city Boards of Assessment Appeals[24] in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Enriquez v. Secretary of Finance[25] posed the question of whether the Secretary of Finance has been deprived by Republic Act No. 1125 of his authority to review the decisions of the Board of Tax Appeals of Pasay City on the listing and assessment of real estate therein under Section 42 of Republic Act No. 183, the City Charter, as amended by Republic Act No. 3275.

The Supreme Court pointed out that Republic Act No. 3275 which amended certain sections of the Pasay City Charter took effect on June 17, 1961, which was a much later date than the approval on June 16, 1954 of Republic Act No. 1127; and that said amendatory act retained the provision of Section 42 of the City Charter which states:

> "The decision of the Board of Tax Appeals shall be final unless the Department Head declares the decision reopened for review, by him, in which case he may make such revision or revaluation as in his opinion the circumstances justify. Such revision when approved by the President of the Philippines shall be final."

The Court then concluded that the legislative intent to retain the Secretary's power of administrative review over the City Board of Appeals cannot, therefore, be seriously questioned.

The Court also noted that there is no irreconcilable conflict between the two statutes in question. Thus:

> "The Secretary of Finance under Section 42 of the City Charter, as amended by Republic Act No. 3275 refers to administrative review of the decisions of the City Board of Tax Appeals, to be exercised by him *motu propio* or upon petition of either the City Assessor or the real estate owner, whereas under Sections 7 and 11 of Republic Act No. 1125, the power of the Court of Tax Appeals refers to *judicial review* by appeal. The administrative review by the Secretary of Finance may conceivably satisfy the taxpayer, thus doing away with the need of his going to the Court of Tax Appeals, while the City Assessor has been held to have no personality to resort to the said Court On the other hand, should the result of such administrative review not be acceptable to the taxpayer, he still retains his right to seek judicial review by appeal to the Court of Appeals."

This power of administrative review would be available only in cities whose charters carry the same provision, provided said charters or amend-

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[23] The Act creating the Court of Tax Appeals was approved on June 16, 1954. The Court of Tax Appeals was formally organized on July 21 of the same year.
[24] Formerly known as the Board of Tax Appeals.
[25] G.R. No. 24402, April 30, 1969

ments thereto to this effect were passed after the approval of Republic Act No. 1125.

It is to be remembered, however, that under Section 11 of Republic Act No. 1125, the owner of the property adversely affected by a decision or ruling of any provincial or city board of tax appeals has only thirty (30) days after receipt of such decision or ruling to appeal to the Court of Tax Appeals. The Court did not clarify whether the thirty day period is to be deemed suspended pending administrative review by the Secretary of Finance and, more importantly, whether he could appeal the decision of the Secretary of Finance to the Court of Tax Appeals, considering that Section 11 of Republic Act No. 1125 is quite explicit that it is the decision of the provincial or city Board of Tax Appeals that is appealable to the Court of Tax Appeals.

13. *Supreme Court does not review findings of facts of Court of Tax Appeals* —

Any party adversely affected by any ruling, order or decision of the Court of Tax Appeals has by law two ways of elevating his case to the Supreme Court, i.e., first, by filing in the Court of Tax Appeals a notice of appeal and with the Supreme Court a petition or review within thirty (30) days from date of receipt of such ruling, order or decision,[26] and second, by causing such ruling, order or decision of the Court of Tax Appeals likewise reviewed by the Supreme Court upon writ of certiorari in proper cases.[27]

In *Dy Peh v. Collector of Internal Revenue*,[28] the taxpayer filed with the Supreme Court a petition for review of a decision and resolution of the Court of Tax Appeals. The Supreme Court, adverting to questions of facts raised in the petition held:

> "The trial court's ruling upon these questions must be sustained pursuant to our consistent ruling to the effect that in reviews of the nature of the present, only errors of law are reviewable by this Court (G.R. L-12174, Maria B. Castro v. Collector, April 26, 1962; G.R. L-9738, Blas Gutierrez, et al. v. Court of Tax Appeals, G.R. L-8556, Benito Sanchez v. Commissioner of Customs, Sept. 30, 1957 and 54 O.G. No. 2, p. 361; Eugenio Perez v. Court of Tax Appeals, G.R. L-10507, May 30, 1958, G.R. No. L-13387, Sy Chiuco v. Collector, March 23, 1960; G.R. No. L-11622, Collector v. Fisher and G.R. No. L-1168, Fisher v. Coll., January 28, 1961.)"

14. *Decision of the Commissioner of Internal Revenue may be in the form of a letter; 30-day period to appeal commences to run from date said letter received.*

Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, involving disputed assess-

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[26] Rep. Act 1125 (1954), sec. 18.
[27] *Ibid*, sec. 19.
[28] G.R. No. 19375, May 21, 1969.

ments may file an appeal in the Court of Tax Appeals within thirty (30) days after receipt to such decision or ruling.[29]

There are, therefore, two factors that will determine the appealability to the Court of Tax Appeals: there must be a disputed assessment and there must be a decision of the Commissioner of Internal Revenue. A "disputed assessment" is one where the taxpayer contests the legality or validity of the assessment. The element of finality should be present in order that a decision can be considered the "appealable decision."

In *Commissioner of Internal Revenue v. The Court of Tax Appeals*,[30] the Commissioner of Internal Revenue sent a letter on October 20, 1952 to respondent Vicente Kho demanding from him payment of the deficiency income tax for the calendar year 1961 in the amount of ₱1,128,440.00 and the amount of ₱3,300.00 as administrative penalty. This letter of demand was sent together with an assessment notice dated November 5, 1952. The Supreme Court considered the letter of the Commissioner addressed to Vicente Kho, dated October 20, 1952, as the appealable decision. Said the Court:

> "It is to be observed that the decision of the BIR Commissioner contemplated by the statute may be in the form of a letter addressed to the taxpayer informing him of the final action taken on his tax liability. Respondent Vicente Kho should have been more diligent in ascertaining the tenor of the letter-decision he received from the BIR Commissioner. Inasmuch as said letter finally determined or resolved his tax liability, the 30-day period within which to appeal commenced to run from the date said letter-decision was received."

To the claim of respondent Vicente Kho that he only received on January 25, 1954 the aforesaid decision of the Commissioner of Internal Revenue, the Court ruled:

> "Even so this afforded him an opportunity to have the decision of the BIR Commissioner reviewed. Republic Act No. 1125 creating the Court of Tax Appeals took effect on June 16, 1954. The Tax Court was formally organized on July 21, of the same year. Although it would seem that respondent Vicente Kho had lost his chance to appeal the disputed assessment, with the enactment of Republic Act No. 1125 he was given another chance to seek relief. We held in the similar cases of Sta. Clara Lumber Co., Inc. v. Court of Tax Appeals, G.R. No. L-9833, Dec. 21, 1957, and Lim Tio Dy Hong v. Court of Tax Appeals, G.R. No. L-10681, March 29, 1958, that such appeal could still be perfected within 30 days from the formal organization of the Court of Tax Appeals. In other words, respondent Vicente Kho had until August 21, 1954 within which to perfect his appeal to the Tax Court and petition for the review of the disputed 1951 deficiency income tax assessment received by him personally on January 25, 1954.
>
> "Vicente Kho did not, however, appeal to the Tax Court on or before August 21, 1954. It was only on August 25, 1962 that Vicente Kho filed a petition for review with the Court of Tax Appeals. This petition was clearly

[29] Rep. Act No. 1125 (1954), secs. 7 and 11.
[30] G.R. No. 21483, April 28, 1969.

filed out of time. In view thereof, the respondent court had no jurisdiction to try and decide the case."

15. *Judicial action for collection begun by filing of a complaint with proper Court of First Instance or filing of an answer to petition for review in Court of Tax Appeals.*

The Supreme Court, in the *Fernandez Hermanos, Inc.* case,[31] rejected the contention of the taxpayer that the Commissioner of Internal Revenue's action to recover its tax liability should be deemed to have prescribed for failure on the part of the Commissioner to file a complaint for collection against it in an appropriate civil action, as contradistinguished from the answer filed by the Commissioner to its petition for review of the questioned assessments in the case *a quo*. The Court said:

"This Court has consistently held that a judicial action for the collection of a tax is begun by the filing of a complaint with the proper court of first instance, or where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.[32] This is but logical for where the taxpayer avails of the right to appeal the tax assessment to the Court of Tax Appeals, the said Court is vested with the authority to pronounce judgment as to the taxpayer's liability to the exclusion of any other court. In the present case, regardless of whether the assessments were made on February 24 and 27, 1956, as claimed by the Commissioner, or on December 27, 1955 as claimed by the taxpayer, the government's right to collect the taxes due has clearly not prescribed, as the taxpayer's appeal or petition for review was filed with the Tax Court on May 4, 1960, with the Commissioner filing on May 20, 1960 his Answer with a prayer for payment of the taxes due, long before the expiration of the five-year period to effect collection by judicial action counted from the date of assessment."

16. *In case of failure to file a return, Government can still file a civil action to collect at any time within 10 years after discovery of omission —*

The principal question before the Supreme Court in *Republic v. Tan*[33] was whether, as contended by defendant-appellee, the applicable law is Section 51(d) of the National Internal Revenue Code before its amendment by Republic Act No. 2343 on June 20, 1959, which reads:

"In cases of refusal or neglect to make a return and in cases of erroneous, false or fraudulent returns the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this case or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment."

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[31] *Supra*, note 6.
[32] Alhambra Cigar & Cigarette Mfg. Co. v. Collector, 105 Phil. 1337 (1959), cited in Palanca v. Commissioner, G.R. No. 16661, January 31, 1962, 4 S.C.R.A. 263, 266; Collector v. Bohol Land Trans. Co., 107 Phil. 965, 972 (1960).
[33] G.R. No. 25483, May 23, 1969.

or, as contended by the plaintiff-appellant, Section 332(a) of the same Code, which provides:

> "In the case of a false or fraudulent return with intent to evade tax or of a *failure to file a return*, the tax may be assessed, or a proceeding in court for the collection of said tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission." (Italics supplied)

Answering the question, the Supreme Court held:

> "This being a judicial action for the collection of income taxes where the taxpayer had failed to file income tax returns the same could be brought at any time within ten (10) years after the discovery of the omission. Here, the defendant-appellee's failure to file the returns was discovered in August, 1954. Hence, the Republic had ten (10) years from that date, or until August, 1964, within which to institute an action for collection. The action in the instant case having been commenced in May, 1958, or four (4) years after the discovery of the omission, it is clear that the lower court erred in dismissing the complaint on the ground of prescription under Section 51(d)."

17. *Assessment and collection of erroneously refunded franchise tax covered by 5-year prescriptive period* —

In *Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc.*[34] respondent Ilagan Electric & Ice Plant, holder of a franchise to operate and maintain an electric light, heat and power system, on the strength of the letter-ruling of the Deputy Collector of Internal Revenue dated December 8, 1954, informing respondent that it was liable only for 2% franchise tax under the provisions of its legislative franchise, rather than the higher 5% franchise tax imposed under Section 259 of the National Internal Revenue Code, paid its franchise tax at the lower rate of 2% on its gross receipts for the period from October 1, 1955 to September 30, 1959. Prior thereto, respondent had paid its franchise tax at the higher rate of 5% provided by the Tax Code. Upon respondents' claim for refund, petitioner refunded to it the sum of ₱2,520.76, representing the difference between the 5% franchise tax actually paid and the lesser rate of 2% tax for which respondent should have been liable under the said ruling of the Deputy Collector, corresponding to the period from the 4th quarter of 1952 to the 4th quarter of 1954.

Subsequently, however, petitioner in an assessment dated July 27, 1961, held respondent liable for franchise tax at the higher rate of 5% provided in Section 259 of the Tax Code instead of the lower rate of 2% provided in its legislative franchise, in pursuance of the Supreme Court's decision on May 25, 1959 in *Hoa Hin Co., Inc. v. Collector of Internal Revenue*[35] that the higher rate imposed by the Tax Code is binding upon franchise grantees

[34] G.R. No. 23081, September 30, 1969.
[35] 105 Phil. 783 (1959).

in the absence of exemption clauses in their legislative franchises precluding the imposition of a higher tax.[36]

Based on the foregoing facts, the issue presented was whether or not the recovery of the sum of ₱2,520.67 alleged as erroneously refunded franchise tax is barred by the five-year prescriptive period of Section 331 of the Tax Code.[37] Petitioner claimed that it should be the six-year prescriptive period for quasi-contracts provided in Article 1145 of the Civil Code, contending that Article 2155, in relation to Article 2154, both of the Civil Code, which provides that where payment has been made by reason of a mistake in the construction or application of a doubtful or difficult question of law, the obligation on the part of the recipient to return it arises, applies to the case at bar. In other words, according to the petitioner, there existed a quasi-contract relationship between the government and the taxpayer known as "solutio indebiti."

Resolving the issue, the Supreme Court held:

> "This contention of petitioner has been squarely ruled out by this Court in the earlier case of Guagua Electric Light Co., Inc. v. Collector of Internal Revenue, involving identical relevant facts and legal issues, where we held that such a demand on the part of the Collector (now Commissioner) of Internal Revenue for payment of an erroneously refunded franchise tax 'is in effect an assessment for deficiency franchise tax.' And being so, the right to assess or collect the same is governed by Section 331 of the Tax Code rather than by Article 1145 of the Civil Code. A special law (Tax Code) shall prevail over a general law (Civil Code). This Court there held that the government's right to assess and collect the total sum of ₱16,593.87 representing franchise tax allegedly refunded erroneously as overpayment of the franchise holder was barred by the five-year prescriptive period provided in Section 331 of the Tax Code and ordered the elimination thereof from the judgment of the Tax Court.
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> "The Tax Court, therefore, correctly ruled that under the specific limitations on assessment provided in Section 331 of the Tax Code, the petitioner was restricted to a period of five years from the filing of the quarterly returns of respondent, the latest being on the 4th quarter of 1954, within which to assess anew respondent for payment of the amount of ₱2,520.67, which petitioner had refunded on March 21, 1956 as overpayment of franchise tax corresponding to the period from the 4th quarter of 1952 to the 4th quarter of 1954; that since the assessment was made only on July 27, 1961 and was received by respondent on August 11, 1961, the assessment was

[36] This doctrine has since then been re-affirmed by the Supreme Court in a number of cases.

[37] Sec. 331 provides: Period of limitation upon assessment and collection. Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

made beyond the five-year period prescribed by the Tax Code; and that consequently, the right of petitioner to assess having been barred by prescription, no action to recover the said amount could now be taken under Section 332(c) of the same Code."

18. *Issuance of preliminary injunction to restrain enforcement of Tax Census Act improper —*

Vera v. Arca[38] held as improper the issuance of a writ of preliminary injunction to restrain the enforcement of the Tax Census Act. The Supreme Court anchored its disapproval of the issuance on the following legal propositions:

1. Where the action required of a lower court would be tantamount, even if only for a temporary period, to disregarding the clearly expressed will of the two branches of the government, the need for caution is greatest.

2. The presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. Except in cases where the specific freedoms of belief whether religious or secular, of expression, of assembly and of association are concerned, a domain where Congress is forbidden to trespass except under the clear and present danger doctrine, the need for introducing evidence to counteract the assumption that a statute is valid may be unavoidable.

3. Where there is an invasion of the preferred freedoms of belief, of expression as well as the cognate rights to freedom of assembly and association, an affirmative relief in the form of preliminary injunction to stop the enforcement of an act of Congress may be granted by the courts.

B. CUSTOMS AND TARIFF CASES

1. *Collector of Customs has the duty to execute the laws faithfully; duty covers enforcement of treaties —*

According to the Laurel-Langley Agreement concluded on September 6, 1956, "the ordinary customs duty to be collected on United States articles as defined in Subparagraph (e) of Paragraph 1 of the Protocol, which during the following portions of the period from January 1, 1956, to July 3, 1974, both dates inclusive, are entered, or withdrawn from warehouse, in the Philippines for consumption, shall be determined by applying the following percentages of the Philippines duty as defined in Subparagraph (h) of Paragraph 1 of the Protocol: (a) During the period from January 1, 1956, to December 31, 1958, both dates inclusive, twenty-five per centum." The Executive Order of the late President Magsaysay of December 31, 1955 provides: "All articles dutiable under the Philippine Tariff Act of 1909, as amended, not specifically included in the foregoing list shall pay, in addition to the existing rates of import duty thereon, an incremental duty amounting to thirty (30) per centum of such rates."

[38] G.R. No. 25721, May 26, 1969.

In *La Perla Cigar & Cigarette Factory v. Capapas*,[39] petitioners filed their respective protests with the then Collector of Customs Ang-angco, not only against the collection of the 25% of the ordinary customs duties on imported United States articles in accordance with the tariff provisions of the Laurel-Langley Agreement but also against the collection of the incremental duty of 30% imposed under the aforesaid Executive Order of the late President Magsaysay, it being their contention that they were liable only under Section 12 of the Tariff Act of 1909 as amended. Only two protests were heard by the then Collector Ang-angco, but this decision of October 15, 1959 was made applicable to all petitioners. He sustained their stand therein, thus resulting in a disregard of both the Laurel-Langley Agreement and the Executive Order No. 150 of the late President Magsaysay.

Petitioners then filed a motion for the immediate execution of what was ordered by Collector Ang-angco, but respondent Pacis, who in the meanwhile had assumed office, issued an order dated March 7, 1960 declaring what was done by his predecessor as null and void.

After petitioners received an adverse decision from the Office of the Commissioner of Customs, and then in the Court of Appeals, they filed the instant petition for review of the decisions of the Court of Tax Appeals.

The Supreme Court issued a stinging rebuke to the then Collector of Customs in this manner:

> "Was it within the power of the then Collector Ang-angco to refuse to collect the duties that must be paid? That is the crucial point of inquiry. We hold that it was not.
>
> "Precisely, he had to give the above legal provisions, quite explicit in character, force and effect. His obligation was to collect the revenue for the government in accordance with existing legal provisions, executive agreements and executive orders certainly not excluded. He would not be living up to his official designation if he were permitted to act otherwise. He was not named Collector of Customs for nothing. He was entrusted with both the delicate and vital function of increasing the sum total of the country's revenues in accordance with existing laws, not to reduce them by not collecting what was therein imposed.
>
> "The enormity of his omission to apply the Laurel-Langley Agreement and Executive Order No. 150 becomes more apparent when one bears in mind that under the Constitution the President himself, in whom the totality of executive power is vested, has the obligation to take care that the laws be faithfully executed. As was stated by us in Philippine National Bank v. Bitulok Sawmill Inc.: 'There may be a discretion as to what a particular legal provision requires; there can be none whatsoever as to the enforcement and application thereof once its meaning has been ascertained. What it decrees must be followed; what it commands must be obeyed. It must be respected, the wishes of the President to the contrary notwithstanding, even if impelled by the most worthy of motives and the most persuasive equitable considerations. Equally relevant is this statement

[39] G.R. Nos. 27948 & 280011, July 31, 1969.

from the opinion there rendered: 'It is a well-settled principle that with all the vast powers lodged in the Executive, he is still devoid of the prerogative of suspending the operation of any statute or any of its terms.'"

The Court also took issue with petitioners' stand that respondent Acting Collector Pacis was not authorized to review and reverse *motu propio* the decision promulgated by his predecessor, former Collector Ang-angco. Thus:

"Respondent Acting Collector Pacis could grant the motion for the reconsideration of Collector Ang-angco's ruling and could deny the plea on the part of petitioners to accord to it the character of finality. Precisely, the error would have been committed had respondent Acting Collector Pacis acted otherwise. The laws is clear, his duty is plain. He followed what was required of him. That was to live up to its mandate.

"He would have been recreant to the trust reposed in him, if for any one reason he failed to grant such a motion for reconsideration and considered as executory the ruling of former Collector Ang-angco, which did suffer from congenital infirmity and ran counter to what the Constitution enjoins. We would not be justified then, considering the circumstances disclosed, to stamp with a stigma of error the steps taken by respondent Acting Collector. Nor can we go along with petitioners in their harsh but unjustified characterization of the procedure followed by him, when asked to pass upon the motion for the reconsideration of the orders of former Collector Ang-angco, the subject of the first two errors assigned, which we find to be devoid of merit."

2. *Court of Tax Appeals has no jurisdiction to review Memorandum of the Secretary of Finance fixing dutiable valuations of certain importations —*

Romualdez v. Arca[40] raised the question of whether the Court of Tax Appeals has jurisdiction to review a memorandum of the Secretary of Finance re-appraising the dutiable valuations of several types of importations.

In this case, Secretary of Finance Eduardo Z. Romualdez, in his letter of February 15, 1966 to the Commissioner of Customs, affirmed the dutiable valuations of several types of remnants fixed in the memorandum of December 8, 1965 issued by the then Secretary of Finance Rufino Hechanova for the Acting Commissioner of Customs.[41]

Claiming to be aggrieved by the enforcement of the new dutiable valuations, respondents Norberto and Nestor de la Merced, as remnant importers and in behalf of other importers of the same materials, filed with the Court of First In-

[40] G.R. No. 25924, April 18, 1969.

[41] On December 8, 1965 the then Secretary of Finance Rufino Hechanova issued a memorandum for the Acting Commissioner of Customs, re-appraising the dutiable valuations of several types of remnants, as follows:

a.	Used clothing	$0.30 per lb.
b.	Cotton Remnants	1.00-1.50 per lb.
c.	Rayon Remnants	₱1.50-2.50 per lb.
d.	Lace Remnants	2.00-3.00 per lb.
e.	Impregnated Fabrics	1.50-2.00 per lb.

stance of Manila a petition for prohibition with preliminary injunction against petitioners Secretary of Finance Eduardo Z. Romualdez, Commissioner of Customs Jacinto Gavino, and Manila Collector of Customs Pedro Pacis. Acting on the petition, respondent Judge Francisco Arca, as presiding judge of Branch I, Court of First Instance of Manila, issued a restraining order *ex parte* on March 4, 1966. On March 16, 1966, the herein petitioners filed a motion to dismiss petition, opposition to issuance of preliminary injunction and motion to dissolve restraining order. When the respondent judge issued an order denying the motion to dismiss, ordering the issuance of a writ of preliminary injunction, enjoining petitioners from enforcing the dutiable values and allowing the withdrawal of the materials imported, petitioners filed with the Supreme Court a petition for certiorari and prohibition with preliminary injunction, alleging, among others, that the Court of First Instance of Manila did not have jurisdiction over the respondents' action, citing in this connection Section 7 of Republic Act No. 1125 which reads:

> "SEC. 7. *Jurisdiction* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> "(1) Decisions of the Collector [now Commissioner] of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
>
> "(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; x x x x x x."

Brushing aside petitioners contention, the Supreme Court held:

> "The petitioners obviously overlook the fact that the respondents' suit seeks, not a review of any decision of the Commissioner of Customs, but rather the nullification of the memorandum of the Secretary of Finance, on the ground that it violates 'applicable' provisions of the Tariff and Customs Code. Indeed, the respondents' action is one for certiorari and prohibition, jurisdiction over which belongs to the Court of First Instance."[42]

This is as it should be. Section 7 of the Republic Act No. 1125 specifically provides that the Court of Tax Appeals has appellate jurisdiction in so far as liabilities for customs duties are concerned, to review only the decisions of the Commissioner of Customs. The Court of Tax Appeals appears to be without jurisdiction to review the decisions of the Secretary of Finance on customs matters.

The Court pointed out that "the case at bar does not, by any valid process of logic or reasoning, involve the fixing of tariff rates and, consequently,

[42] Rep. Act No. 296 (Judiciary Act of 1948), sec. 44(h).

whether the procedure laid down in the Tariff and Customs Code[43] was followed, is one which we do not here find relevant to discuss." Re-appraisal of dutiable valuations does not, therefore, involve the fixing of tariff rates.

3. *Wharfage dues or charges are collectible even though no government wharf or facility was used to unload taxpayer's cargoes.*

Philippine Iron Mines v. The Commissioner of Customs and Court of Tax Appeals,[44] *Caltex (Philippines) Inc. v. Acting Commissioner of Customs*[45] and *Bislig Bay Lumber Co., Inc. v. Commissioner of Customs and Court of Tax Appeals*[46] were jointly decided, since they involved similar facts and the common issue of whether or not wharfage dues are collectible, under Sections 2801 and 2802 of Republic Act No. 1937, commonly known as the Tariff and Customs Code, on goods loaded or unloaded at private wharves.

The Supreme Court pointed out that the common issue in the three cases at bar has already been resolved in the affirmative in *Procter and Gamble Philippine Manufacturing Corporation v. Commissioner of Customs.*[47]

This ruling upholding the imposition of wharfage dues on goods loaded or unloaded at private wharves has been reiterated by the Court in a second *Procter and Gamble* case against the Customs Commissioner in 1968,[48] and several other cases.[49]

In the 1968 *Procter and Gamble* case, Mr. Chief Justice Concepcion, speaking for the Court, further emphasized that "wharfage dues are charged not for the use of any wharf. Like harbor fees, berthing charges, storage charges and the net income from the share of arrastre charges, 'wharfage fees are imposed to 'x x x form a special fund to be known as 'Port Works Fund,' x x x for the study, investigation, field surveys, research, planning, development, construction, improvement, maintenance, and repair of ports, ports facilities and port areas, warehouses, sheds and offices, bouys, lighthouses and other aides to navigation including the purchase, maintenance, rental charges and replacement of necessary equipment x x x."

[43] SEC. 40(a). *Flexible Clause.* — The President, upon investigation by the Commission and recommendation of the National Economic Council, is hereby empowered to reduce by not more than fifty per cent or to increase by not more than fifty per cent or to increase by not more than five times the *rates of import duty* expressly fixed by statute (including any necessary change in classification) when in his judgment such modification in the rates of import duty is necessary in the interest of national economy general welfare and/or national defense.

[44] G.R. No. 23359, October 31, 1969.

[45] G.R. No. 23679, October 31, 1969.

[46] G.R. No. 25400, October 31, 1969.

[47] G.R. No. 22819, April 27, 1967, 19 SCRA 883.

[48] G.R. No. 24173, May 23, 1968, 23 SCRA 691.

[49] Hawaiian-Phil. Co. v. Auditor General, G.R. No. 18440, October 25, 1967, 21 SCRA 481; Cia. General de Tabacos v. Acting Commissioner of Customs, G.R. No. 24247, May 13, 1968, 23 SCRA 600.

The Court, found no compelling reason to warrant a modification or setting aside of the doctrine previously enunciated by it.

4. *Wharfage dues are not customs duties* —

In the *Caltex (Philippines)* case (L-23679), petitioner also contended that it should have been exempted from payment of the wharfage dues as a petroleum concessionaire under Article 103 of the Petroleum Act of 1949[50] which provides that "during the first five years following the granting of any concession, the concessionaire may import free of customs duty all equipment, machinery, material, instruments, supplies and accessories x x x." Petitioner insisted that its privilege of exemption from customs duties[51] should include exemption from the *wharfage dues in question.*

In ruling against petitioner, the Court held:

> "A similar contention that exemption as a new and necessary industry under Republic Act No. 901 included exemption from wharfage dues was rejected by the Court in the 1968 Procter and Gamble Case (*supra*). In that case, the Court held that both under our Constitution and the Tariff and Customs Code, *wharfage dues* are distinct from and not considered as part of *customs duties*: 'Our Constitution provides that' the Congress x x x may not deprive the Supreme Court x x x of its jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari, or writ of error x x x final judgments and decrees of inferior courts' in inter alia, 'all cases involving the legality of any tax, impost, assessment, or toll or any penalty imposed in relation thereto,' and that 'Congress may by law authorize the President x x x to fix x x x tariff rates, import or export quotas, and tonnage and wharfage dues.' Thus, our fundamental law distinguishes between taxes, on the one hand, and 'imposts' — that is to say, tariff rates or duties imposed for the importation of goods — on the other. Similarly, the Constitution does not consider 'wharfage dues' as part of 'tariff rates' or customs duties. And neither does our Tariff and Customs Code. Customs duties are governed by Book I, Title I, of said Code, under the headings 'Tariff Law' and 'Import Tariff,' respectively, whereas wharfage dues are collectible pursuant to Book II thereof, Title VII of said Book, under the caption 'Fees and Charges Collectible by the Bureau of Customs.' Indeed, said Code regards customs duties, taxes and wharfage charges as three (3) distinct and separate concepts.
>
> "Considering furthermore that as earlier stated, wharfage dues are specifically alloted by law for the special Port Works Fund and that exemptions are regarded as in derogation of sovereign authority and of common right and are construed *strictissimi juris* against the person or entity claiming exemption, the contention of petitioner Caltex that its exemption from *customs duties* should be liberally construed to include exemption from *wharfage dues* must fail."

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[50] Rep. Act No. 387 (1949).

[51] Upheld by the Supreme Court in Commissioner v. Caltex (Phil.) Inc., 106 Phil. 829 (1959).

5. *Only the importer can claim refund for erroneous payment of compensating and sales taxes on its importations —*

Central Cooperative Exchange, Inc. v. Court of Tax Appeals[52] is a petition for review of the decision of the Court of Tax Appeals dismissing the claim for petitioner for the refund of the total amount of ₱1,004,834.11 as erroneous payment of compensating and advance sales taxes on certain articles allegedly imported by it, after said Court found as a fact that the Agriculture Credit and Cooperative Financing Administration (ACCFA) and not petitioner was the importer of the articles in question.

Petitioner Central Cooperative Exchange, Inc. (CCE) excepted from said decision contending that it is a federated cooperative association organized under Act No. 3425, as amended; that Section 48 of said Act exempts cooperative marketing associations organized thereunder from the payment of "the merchant's sales tax, the income tax, and all other percentage taxes of whatever nature and description; that it was the importer having paid the corresponding compensating and advance sales taxes on the importations, although the receipts for such payments were issued in the name of the ACCFA; and that the aforesaid decision of the respondent Court of Tax Appeals is contrary to the decision of the Supreme Court, particularly, in the case of *Tan Tiong Bio, et al v. Commissioner of Internal Revenue,* G.R. No. 15778, April 28, 1962.

Anent the question of who was the real importer, the Supreme Court ruled that the claim of petitioner "that it was the real party in the transaction, just because the cost and other expenses incidental to the importations were borne by it," cannot prevail over the conclusion arrived at by the Court of Tax Appeals on the basis of the following facts and circumstances:

> "(1) Under the regulations of the Department of Agriculture and Natural Resources only the ACCFA could import seedlings, and under Republic Act No. 1392, as implemented by Executive Order No. 129 (Sept. 23, 1955), ramie textiles could only be imported by the same entity.
>
> (2) The ACCFA applied with the Central Bank for licenses to import the articles in question and for the corresponding dollar allocations. The import licenses were issued in its name.
>
> (3) The letters of credit to cover the cost of importations were likewise in the name of the ACCFA.
>
> (4) The shipping documents, such as bills of lading and invoices, were all in the name of the ACCFA, which thus appeared to be the consignee of the goods.
>
> (5) The taxes were all paid in the name of the ACCFA, as shown by the tax receipts.
>
> (6) There being no evidence that the bills of lading were endorsed in favor of the CCE, it is evident that the customs brokers who withdrew the goods from the customs area acted in behalf of the ACCFA.

[52] G.R. No. 22726, February 27, 1969.

> Besides, in the case of the importations of ramie textiles, the ACCFA actually paid all the costs and expenses, including taxes, although the payments appeared to have been debited against the accounts of the CCE."

6. *Seizure of vessels engaged in smuggling even if on the high seas is legal* —

Asaali v. Commissioner of Customs[53] is a motion for reconsideration of the decision of the Supreme Court of December 16, 1968, upholding the validity of the seizure of the vessels and cargo in question, done outside Philippine jurisdiction. It is "a decision intended x x x to lend support to the government 'policy relentlessly adhered to and unhesitatingly pursued to minimize, if not to do away entirely, with the evil and corruption that smuggling brings in its wake.'"

Petitioners insisted on the alleged lack of jurisdiction of the Customs authority, invoking Section 1141 of the Revised Administrative Code, the pertinent provision of which reads as follows:

> "For the due and effective exercise of the powers conferred by law in the Bureau of Customs, and to the extent requisite therefor, said Bureau shall have the right of supervision and police authority over all seas within the jurisdiction of the Government of the Republic of the Philippines and over all coasts, ports, harbors, bays, rivers, and inland waters navigable from the sea.[54]

The present legal statutory provision is found in the Tariff and Customs Code in the Philippines in almost identical language except for the explicit reference to jurisdiction being exercised over airports.[55]

The Supreme Court, in denying the motion for reconsideration, held:

> "The above section, while apparently lending support to the contention of petitioners in their motion for reconsideration, should not be given a restrictive significance, especially one which would negate the power exercised by the Commissioner of Customs in this case in view of the undeniable fact of smuggling. If, under the circumstances disclosed, the government would be rendered powerless and its effort to protect itself from the evils of smuggling nugatory, then a competence, the existence of which as above pointed out in *Church v. Hubbart*[56] is not subject to doubt in accordance with an accepted International Law doctrine, would be taken away from it. We should be loathe to arrive at

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[53] G.R. No. 24170, February 28, 1969.

[54] Rev. Adm. Code, sec. 1141. The second paragraph thereof speaks of a seizure of a vessel by reason of an act done in Philippine waters, the pursuit of which could continue beyond the maritime zone into the high seas. This paragraph has no application on the case at bar because the question involved is of a vessel that was seized before reaching our territorial waters.

[55] Rep. Act No. 1937 (1957), sec. 603.

[56] 2 CRANCH 187, 2 L.Ed. 249 (1804). This decision held: "a state has the right to protect itself and its revenues, a right not limited to its own territory but extending to the high seas. In the language of Chief Justice Marshall: 'The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory."

such a result, repugnant as it is, to the constitutional precept that among the basic postulates of our policy is the adoption of 'the generally accepted principles of international law as part of the law of the nation.[57]

"There is an equally valid ground for so construing the Administrative Code provision in question as to justify the seizure herein made. So it would necessarily follow from the decisive facts as found by the Court of Tax Appeals. Considering, as the language of the late Judge Luciano so emphatically stressed, that even for 'a simpleton or a perennial optimist' the thought that these vessels 'were probably not bound for a Philippine port,' would be 'quite irrational' for Filipino sailors 'manning five Philippine vessels (would not) sneak out of the Philippines and go to British North Borneo, and come a long way back laden with highly taxable goods only to turn about upon reaching the brink of our territorial waters x x x. There is thus more than ample justification for including in the legal fiction that the seizure conducted under such peculiar circumstances could be considered as having taken place within Philippine waters. Any other view would render nugatory a conceded governmental power."

7. *Bureau of Customs, as an arrastre operator exercising a governmental function, is immune from suit —*

Insurance Company of North America v. Osaka Shosen Kaisha[58] reiterates the definitely settled principle that the Bureau of Customs and/or the Customs Arrastre Service, being mere arms of the national govenment, are protected by the non-suability of state doctrine where the state has not given its consent to be sued,[59] particularly where, as in this case, there is no allegation in the complaint that said defendants, much less the Republic, has given such consent.[60] The Court added that the fact that defendants-appellees have not raised such defense at any stage of the case is of no moment for the defense of immunity from suit may be invoked by the courts *sua sponte* at any stage of the proceedings.

8. *One-year period in Section 23 of the Philippine Tariff Act of 1909 is non-extendible —*

In *Asturias Sugar Central, Inc. v. Commissioner of Customs*[61] the basic issue tendered for resolution was whether the Commissioner of Customs is vested, under the Philippine Tariff Act of 1909, the then applicable law, with

[57] CONST. art. II, sec. 3.
[58] G.R. No. 22784, March 28, 1969.
[59] Equitable Insurance & Casualty Co., Inc. v. Smith Bell & Co., (Phil.) Inc., G.R. No. 24388, August 26, 1967; Insurance Company of North America v. Republic of the Philippines, et al., G.R. No. 27516, September 5, 1967; Philippine First Insurance Company v. Arrastre Service, G.R. No. 26951, September 12, 1967; Caltex (Phil.), Inc. v. Customs Arrastre Service, G.R. No. 26947, December 26, 1967; Domestic Insurance Company of the Phils. v. American Pioneer Line, G.R. No. 28651, February 27, 1968; Domestic Insurance Company of the Philippines v. Republic of the Philippines, G.R. No. ?9362, September 27, 1968.
[60] American Insurance Company v. Macondary & Company, Inc., *supra*.
[61] G.R. No. 19337, September 30, 1969.

discretion to extend the period of one year provided for in Section 23 of the Act, which provides:

> "That containers, such as casks, large metal, glass, or other receptables which are, in the opinion of the collector of customs, of such character as to be readily identifiable may be delivered to the importer thereof upon identification and the giving of a bond with sureties satisfactory to the collector of customs in an amount equal to double the estimated duties thereon, conditioned for the exportation thereof or payment of the corresponding duties thereon within one year from the date of importation, under such rules and regulations as the Insular Collector of Customs shall provide."[62]

To implement Section 23, Customs Administrative Order 389, dated December 6, 1940 was promulgated, paragraph XXVIII of which provides that "bonds for the re-exportation of cylinders and other containers are good for 12 months without extension," and paragraph XXXI, that "bonds for customs brokers, commercial samples, repairs and those filed to guarantee the re-exportation of cylinders and other containers are not extendible." And insofar as jute bags as containers — the items imported by petitioner — are concerned, Customs Administrative Order 66 dated August 25, 1948 was issued, prescribing rules and regulations governing the importation, exportation and identification thereof under Section 23 of the Philippine Tariff Act of 1909. Said administrative order provides:

> "The importation of jute bags intended for use as containers of Philippine products for exportation to foreign countries shall be declared in a regular import entry supported by a surety bond in an amount equal to double the estimated duties, conditioned for the exportation or payment of the corresponding duties thereon within one year from the date of importation."

Petitioner requested the Commissioner of Customs for a week's extension of the re-exportation tax and special import tax bond posted by it which was to expire the following day, giving as reasons for failure to export the jute bags in question force majeure and fortuitous event. This request was denied as the re-exportation was not effected within one year. Petitioner was required to pay the amount of ₱28,629.42 as customs duties and special import taxes due thereon, which the petitioner paid under protest.

Petitioner then demanded the refund of the amount it had paid on the ground that its request for extension of period of one year was filed on time. Alternatively, petitioner asked for refund of the same amount in the form

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[62] This section was superseded by Sec. 105(x) of the Tariff & Customs Code which took effect on July 1, 1957. Section 105(x) provides: "Large containers (e.g., demijohns, cylinders, drums, casks and other similar receptacles of metal, glass or other material) which are, in the opinion of the Collector of Customs, of such a character as to be readily identifiable may be delivered to the importer thereof upon identification and the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within one year from the date of acceptance of the import entry.

of a drawback under Section 106(b) in relation to Section 105 (b) of the Tariff and Customs Code.

From the action of the Commissioner of Customs upholding the decision of the Collector denying the claim for refund, petitioner appealed to the Court of Tax Appeals. The latter affirmed the decision of the Commissioner of Customs.

The Supreme Court held that the one year period prescribed in Section 23 of the Philippine Tariff Act is non-extendible and compliance therewith is mandatory. Thus:

> "It will be noted that section 23 of the Philippines Tariff Act of 1909 and the superseding sec. 105(x) of the Tariff and Customs Code, while fixing at one year the period within which the containers therein mentioned must be exported, are silent as to whether the said period may be extended. It was surely by reason of this silence that the Bureau of Customs issued Administrative Orders 389 and 66, already adverted to, to eliminate confusion and provide a guide as to how it shall apply the law, and, more specifically, to make officially known its policy to consider the one-year period mentioned in the law as non-extendible.
>
> "Considering that the statutory provisions in question have not been the subject of previous judicial interpretation, then the application of the doctrine of 'judicial respect for administrative construction,' would, initially, be in order.
>
> "The administrative order in question appears to be in consonance with the intention of the legislature to limit the period within which to export imported containers to one year, without extension, from the date of importation. Otherwise, in enacting the Tariff and Customs Code to supersede the Philippine Tariff Act of 1909, Congress would have amended section 23 of the latter law so as to overrule the long-standing view of the Commissioner of Customs that the one-year period therein mentioned is not extendible."

The Court considered as unmeritorious the petitioner's argument that force majeure and/or fortuitous events prevented it from exporting the jute bags within the one year.

The Court then tackled the argument of petitioner that, granting that Customs Administrative Order 389 is valid and binding, yet "jute bags" cannot be included in the phrase "cylinders and other containers" mentioned therein. The Court noted that the Philippine Tariff Act of 1909 and the Tariff and Customs Code, which Administrative Order 389 seeks to implement, speak of containers in general; that the enumeration following the word "containers" in the said statutes serves merely to give examples of containers and not to specify the particular kinds thereof; and, therefore, there is no reason to suppose that the customs authorities had intended, in Customs Administrative Order 389 to circumscribe the scope of the word "container."

9. *An importer who had opted to take advantage of Section 105 of the Tariff and Customs Code may not avail of Section 106 of the same Code.* —

The *Asturias Sugar Central, Inc. v. Commissioner of Customs* case[63] also passed upon the effect of availment by the importer of Section 105(x) of the Tariff and Customs Code.[64]

Petitioner argued that not having availed itself of the full exemption granted by Section 105(x) due to its failure to export the jute bags within one year, it is, nevertheless, by authority of Section 106(b) of the same Code, entitled to a 99% drawback of the duties it had paid, averring further that Section 106(b) does not presuppose immediate payment of duties and taxes at the time of importation. Section 106(b) reads as follows:

> "(b). *On Articles Made from Imported Materials or Similar Domestic Materials and Wastes Thereof.* — Upon the exportation of articles manufactured or produced in the Philippines, including the packing, covering, putting up, marking or labelling thereof, either in whole or in part of imported materials, or from similar domestic materials of equal quantity and productive manufacturing quality and value, such question to be allowed a drawback equal in amount to the duties paid on the imported materials so used, or where similar domestic materials are used, to the duties paid on the equivalent imported similar materials, less one per cent thereof: Provided, That the exportation shall be made within three years after the importation of the foreign material used or constituting the basis for drawback x x x."

The Supreme Court considered the contention as devoid of merit. It held:

> "The provisions invoked by the petitioner (to sustain his claim for refund) offer two options to an importer. The first, under sec. 105(x), gives him the privilege of importing, free from import duties, the containers mentioned therein as long as he exports them within one year from the date of acceptance of the import entry, which period, as shown above, is not extendible. The second, presented by sec. 106(b), contemplates a case where import duties are first paid, subject to refund to the extent of 99% of the amount paid, provided the articles mentioned therein are exported within three years from importation.
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> "It would seem then that the Government would forego collecting duties on the articles mentioned in section 105(x) of Tariff and Customs Code as long as it is assured, by the filing of a bond, that the same shall be exported within the relatively short period of one year from the date of acceptance of the import entry. Where an importer cannot provide such assurance, then the Government, under sec. 106(b) of said Code, would require payment of the corresponding duties first. The basic purpose of the two provisions is the same, which is, to enable a local manufacturer to compete in foreign markets, by relieving him of the disadvantages resulting from having to pay duties on imported merchandise, thereby building up export trade and encouraging manufacture in the country. But there is

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63 G.R. No. 19337, September 30, 1969.
64 *Supra*, note 62.

a difference, and it is this: under section 105(x) full exemption is granted to an importer who justifies the grant of exemption by exporting within one year. The petitioner, having opted to take advantage of the provisions of section 105(x), may not, after having failed to comply with the conditions imposed thereby, avoid the consequences of such failure by being allowed a drawback under section 106(b) of the same Act without having complied with the conditions of the latter section.

"For it is not to be supposed that the legislature had intended to defeat compliance with the terms of section 105(x) thru a refuge under the provisions of section 106(b). A construction should be avoided which affords an opportunity to defeat compliance with the terms of a statute. Rather, courts should proceed on the theory that parts of a statute may be harmonized and reconciled with each other."

10. *Importer under Barter Law liable for advance sales tax if he indorses bills of lading, in blank, to local cigarette manufacturers —*

In *Philippine Tobacco Flue-Curing and Redrying Corporation v. Commissioner of Internal Revenue,*[65] petitioner applied for a barter permit to export 14 million pounds of locally-grown Virginia leaf tobacco and, by way of barter, to import around 10 million pounds of U.S. Virginia leaf tobacco. The application was granted but subject to certain conditions expressly stated in the permit, among which are: (a) that in return for the privilege to import, it would export locally produced Virginia leaf tobacco equivalent in value to that of the Virginia leaf tobacco to be imported; (b) that after the commodity had been imported, petitioner would allocate the same among several local cigarette manufacturers who were in dire need thereof for blending purposes; and (c) that the permit cannot be transferred, assigned or negotiated.

Pursuant to the barter permit, 9,997,772 pounds of U.S. Virginia leaf tobacco were received and landed at the port of Manila, with shipping documents consigning the commodity to petitioner. However, before the commodity was released from Customs, petitioner endorsed the bills of lading, in blank, to various local cigarette manufacturers who eventually obtained the release thereof from the customs' custody without payment of the advance sales tax.

The Supreme Court held petitioner liable for the advance sales tax due on the importation of the nearly 10 million pounds of Virginia leaf tobacco, thus:

"The permit granted to petitioner expressly and in clear terms provided, among other conditions: 'this permit cannot be transferred, assigned or negotiated.' The manifest and logical purpose of this condition was to have petitioner retain its character as — and thus remain in the eyes of the law and the Government — the importer of whatever U.S. Virginia leaf tobacco was brought into the Philippines under and by virtue of said permit. This conclusion becomes more evident in the light of the fact that,

[65] G.R. No. 22337, June 14, 1969.

were the local cigarette manufacturers to whom the foreign leaf tobacco was ultimately allocated or sold to be considered the importers thereof, they would be exempt from paying the advance sales tax. In other words, by the simple expedient of selling the foreign leaf tobacco to them, petitioner would have been able to evade or avoid payment of the advance sales tax due on the commodity, amounting to the considerable amount of ₱2,507,693.17. Petitioner's attempt to accomplish this cannot be sanctioned."

11. *Importations must comply with Central Bank circulars.* —

F. Sare Enterprises v. Commissioner of Customs[66] merely reiterated its rulings in *Capulong v. Aseron*[67] that (1) while Circulars 44 and 45 of the Central Bank do not expressly so provide, the forfeiture of goods imported in violation of those circulars may nevertheless be justified on the basis of Section 1363(f) of the Administrative Code, which authorizes the forfeiture of "any of the merchandise prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law"; (2) while goods imported in violation of the circulars may not be considered "merchandise of prohibited importation," they nevertheless fall within the other category of merchandise imported "contrary to law," because regulations issued pursuant to "customs laws form part thereof, so that violation of the said regulations can properly be regarded as coming within the purview of section 1363(f) of the Administrative Code; and (3) Central Bank Circular 133 has not exactly repealed Central Bank Circulars Nos. 44 and 45 but rather it re-enacted them when it provided therein that all existing regulations not inconsistent with the circular are deemed incorporated and made integral parts thereof by reference. And it cannot be disputed that both Central Bank Circular Nos. 44 and 45 and Central Bank Circular No. 133 have a common purpose — which is to require the presentation of a release certificate from the Central Bank before any importation may be made to the Philippines.

12. *Determination of all questions affecting disposal of property proceeded against in a seizure and forfeiture case belongs to the Bureau of Customs; judicial recourse to the Court of Tax Appeals, not Court of First Instance* —

In *Diosamito v. Balangue*[68] the issue presented was whether or not the Court of First Instance has jurisdiction to recover by replevin a property which is subject of a seizure and forfetiure proceedings for violation of the Tariff and Customs Code. The Supreme Court characterized the issue as not one of first impression, it having previously ruled in *Pacis v. Averia*[69] and in *De Joya, et al v. David,*[70] as follows:

[66] G.R. No. 22263, August 28, 1969.
[67] G.R. No. 22989, May 14, 1966.
[68] G.R. No. 30734, July 28, 1969.
[69] G.R. No. 22526, November 29, 1966.
[70] G.R. No. 23504, December 29, 1967.

"Should Section 44(c) of the Judiciary Act of 1948 give way to the provisions of the Tariff and Customs Code, or vice versa? In our opinion, in this particular case, the Court of First Instance should yield to the jurisdiction of the Collector of Customs. The jurisdiction of the Collector of Customs is provided for in Republic Act No. 1937 which took effect on July 1, 1957, much later than the Judiciary Act of 1948. It is axiomatic that a later law prevails over a prior statute. Moreover, on grounds of public policy, it is more reasonable to conclude that the legislators intended to divest the Court of First Instance of the prerogative to replevin a property which is a subject of a seizure and forfeiture proceedings for violation of the Tariff and Customs Code. Otherwise, actions for forfeiture of property for violation of Customs laws could easily be undermined by the simple device of replevin.

"Furthermore, Section 2303 of the Tariff and Customs Code requires the Collector of Customs to give to the owner of the property sought to be forfeited, written notice of the seizure and to give him the opportunity to be heard in his defense. This provision clearly indicates the intention of the law to confine in the Bureau of Customs the determination of all questions affecting the disposal of property proceeded against in a seizure and forfeiture case. The judicial resource of the property owner is not in the Court of First Instance but in the Court of Tax Appeals, and only after exhausting administrative remedies in the Bureau of Customs."

The Court also branded as gratuitous the argument of appellant that the truck in question could not be the subject of seizure, confiscation or forfeiture in the absence of any evidence showing that the cigarettes loaded therein had been imported illegally. The Court said:

"Prima facie, at least, the cigarettes that were loaded on the truck in question when it was apprehended being of the 'blue seal' or untaxed category, had been imported illegally; and it was before the Collector of Customs in the seizure-forfeiture proceeding he had instituted that evidence to the contrary should be adduced by the plaintiffs. And as may be gathered from the pleadings, that administrative proceeding had been set for hearing twice with due notice to the parties, but no actual hearing had yet been conducted when the instant case was instituted in the court *a quo*. The law grants the Collector of Customs sufficient latitude in determining whether or not a certain article is subject to seizure or forfeiture (Sec. 2530, pars. (f) and (k), Tariff and Customs Code 1957, supra); and his decision on the matter is appeable to the Commissioner of Customs and then to the Court of Tax Appeals, not to the Court of First Instance."

C. LOCAL TAXATION

1. *Manufacturer which sells products it manufactures, without opening stores for the sale of such products, is not a dealer —*

Caltex (Philippines) Inc. v. City of Manila[71] involves the applicability to plaintiff Caltex (Philippines) Incorporated of City of Manila Ordinance No. 3420, as amended, which imposes a quarterly tax on wholesale dealers

[71] G.R. No. 22764, July 28, 1969.

in general merchandise based on their quarterly gross sales or receipts during the preceding quarter.

Plaintiff, which is primarily engaged in scientifically processing crude oil into different finished petroleum products adopted, beginning January 15, 1958, a completely revised merchandising system. Since then it has entirely disallowed sales of its products from its warehouses and adopted a new selling procedure whereby a customer may place his order only at plaintiff's main office at Padre Faura, Manila. The sale is then invoiced in the said office, after which the order is teletyped to the Pandacan depot, where actual delivery is made. In other words, the Pandacan depot has ceased to be a selling center; it has simply become a storage store and conveniently utilized as the delivery point of the petroleum products earlier sold.

With this newly adopted operational set-up, plaintiff contended that it may not be considered a dealer anymore within the meaning of Ordinance No. 3420 as amended. Plaintiff's insistence on its non-liability for the payment of the wholesale dealer's tax is anchored on the premise that it is principally a manufacturer, not a dealer. In support of its argument plaintiff falls back on previous rulings of this Court in similar cases.

In *Central Azucarera Don Pedro v. City of Manila,*[72] plaintiff sought recovery of a certain sum collected from it by defendants under the authority also of Ordinance No. 3420 as amended, the same ordinance involved in the *Caltex* case. Although plaintiff there admittedly sold the sugar that it manufactured, this Court did not consider it a dealer. The jurisprudence in the United States cited in that decision has defined the term "dealer" as a "person who makes a business of buying and selling goods, especially as distinguised from a manufacturer; x x x middleman between the producer and the consumer x x x; one who buys to sell again x x x (who) stands between the producer and consumer, and depends for his profit not on the labor he bestows on his commodities, but on the skill and foresight with which he watches the markets."

The Supreme Court, relying on *Central Azucarera Don Pedro v. City of Manila* held that undoubtedly plaintiff is not a dealer under the foregoing definition, nor does it become one simply because it sells the products it manufactures, since the right to manufacture implies the right to sell the manufactured products. The exception recognized by the Court in the *Central Azucarera* case is if the manufacturer "carries on the business of selling goods or his products manufactured by him at store or warehouse apart from his own shop or manufactory." That was not the situation of plaintiff Caltex.

The Court noted that the business set-up of the Central Azucarera de San Pedro and that of plaintiff in respect of the point at issue are almost

[72] 97 Phil. 627 (1955).

identical. In both cases sales transactions are entered into and perfected at the respective main offices, where orders are received and approved before delivery orders are sent to the warehouses, where in turn actual deliveries are made. It is common policy for both not to permit warehouse sales, nor do they maintain any other separate stores where they may sell their products independently from their main offices.

The Court also refused to subscribe to the blanket charge that plaintiff deliberately revised its merchandising procedure in order to come within the ambit of the *Central Azucarera de San Pedro* doctrine. It noted that the *Central Don Pedro* ruling was laid down in 1955, while plaintiff's revised procedure was adopted not after almost three years, or on January 15, 1958.

2. *City has broad and sufficiently plenary power of taxation —*

Serafica v. Treasurer of Ormoc City[73] involved the legality of Ordinance No. 13, Series of 1964, of Ormoc City, imposing a "tax of five pesos (₱5.00) for every one thousand (1,000) board feet of lumber sold at Ormoc City by any person, partnership, firm, association, corporation or entities."

Plaintiff-appellant assailed the ordinance as null and void upon the grounds that: (1) The Charter of Ormoc City (Republic Act Nos. 179 and 429) authorizes the same to "regulate", but not to "tax" lumber yards; (2) the ordinance in question imposes, in effect, double taxation, because the business of lumber yard is already regulated under said Charter and the sale of lumber is a mere incident to the business of lumber yard; (3) the tax imposed is unfair, unjust, arbitrary, unreasonable, oppressive and contrary to the principles of taxation; and (4) the public was not heard and given a chance to air its views thereon.

With respect to the first ground, the Supreme Court held that the taxing power of the City of Ormoc under Section 2 of Republic Act No. 2264, as amended by Republic Act No. 4497, otherwise known as the Local Autonomy Act is "broad and sufficiently plenary to cover everything, excepting those mentioned therein"; and that as in *Ormoc Sugar Co. v. Municipal Board of Ormoc City*[74] it upheld the validity of a sales tax.

As regards the second ground, the Court said that regulation and taxation are two different things, the first being an exercise of police power, whereas the latter is not. Furthermore, continued the Court, double taxation is not prohibited in the Philippines.

Anent the third objection which is premised upon the fact that the tax in question is imposed regardless of the class of lumber sold, although there are several categories commanding different prices, the Court noted that plaintiff-appellant has not proven, or even alleged the prices corresponding

[73] G.R. No. 24813, April 28, 1969.
[74] G.R. No. 24322, July 21, 1967.

to each category, thereby depriving the Court of means to ascertain the accuracy of the conclusion drawn by him. The Court then relied upon the presumption that the City Council had merely complied with its duty and that the ordinance is valid.

The last objection is based upon Provincial Circular No. 24 of the Department of Finance, dated March 31, 1960, suggesting that, "in the enactment of tax ordinances x x x under the Local Autonomy Act x x x where practicable, public hearings be held wherein the views of the public x x x may be heard." The Supreme Court pointed out that this is a mere suggestion, compliance with which is not obligatory, so that failure to act in accordance therewith cannot and does not affect the validity of the tax ordinance; and that since local governments are not subject to the control, but merely to the general supervision of the President, it is, stated the Court, doubtful that the latter could have made compliance with said circular obligatory.

The Court also looked into the fact that, pursuant to Section 2 of Republic Act No. 2264, as amended, "no city, municipality or municipal district may levy or impose x x x x x taxes on forest products or forest concessions." It held, in this connection, that although lumber is a forest product, this limitation has no application to the case at bar, the tax in question being imposed, not upon lumber, but upon its sale; and that said tax is not levied upon the lumber in plaintiff's sawmill and does not become due until after the lumber has been sold.

The case at bar is distinguishable from *Golden Ribbon Lumber Co., Inc. v. City of Butuan*[75] in that the ordinance involved therein provided that "every person, association or corporation operating a lumber mill and/or lumber yard within the territory of the City of Butuan shall pay to the City a tax of two-fifths (₱.004) centavo for every board foot of lumber sawn, manufactured and/or produced." In short, the tax in that case was imposed upon the "lumber" — a forest product, not subject to local taxation — whether sold or not. Similarly, *Santos Lumber Co. v. City of Cebu*[76] and *Jos. S. Johnston & Sons v. Ramon Regondola*[77] cited by the plaintiff, refer to situations arising before the enactment of Republic Act No. 2264, and, hence, are inapplicable to the present case.

The Court finally disposed of the proviso in Section 2 of said Act prohibiting the imposition of "any percentage tax on sales or other taxes, in any form based thereon." This injunction, said the Court, is directed exclusively to "municipalities and municipal districts," and does not apply to cities.

[75] G.R. No. 18534, December 24, 1964.
[76] 102 Phil. 871 (1958).
[77] G.R. No. 9355, November 26, 1957.

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